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CHAPTER **862**
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INTRODUCED BY Senator Burton

FEBRUARY 25, **1999**

An act to repeal the heading of Chapter 4 (immediately following Section 14536) of Part 5.3 of Division 3 of, to repeal the heading of Article 1 (immediately following Section 14536) of Chapter 4 of Part 5.3 of Division 3 of, and to add Chapter 4 (commencing with Section 14550) to Part 5.3 of Division 3 of, the Government Code, relating to transportation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 928, Burton. Transportation: financing.

Existing law requires that all money in the State Highway Account in the State Transportation Fund derived from federal sources or from appropriations to other state agencies, or deposited in the account by local agencies or by others, be continuously appropriated to, and be available for expenditure by, the Department of Transportation for the purposes for which the money was made available. Unless otherwise expressly provided for by law, none of the balance of the money in the account may be expended until it has been specifically appropriated by the Legislature.

This bill would continuously appropriate the amounts specified in the Budget Act as having been deposited in the account from federal transportation funds and pledged by the California Transportation Commission, as specified below, to the Treasurer for the purposes of issuing federal highway grant anticipation notes, as specified, to fund transportation projects selected by the commission. The bill thereby would make an appropriation.

The bill would require the commission, in order to provide security for the repayment of the notes, to adopt a resolution dedicating and pledging any future receipts of federal transportation funds to the payment of the notes. Upon taking that action, the commission would be authorized to request the Treasurer to issue the notes.

The bill would require the Treasurer to issue the notes pursuant to the commission's resolution and would require the proceeds from the sale of the notes to be deposited in the Transportation Financing

Subaccount, which the bill would create in the account. The funds in the subaccount would be available for use as directed by the commission and administered by the Department of Transportation and to pay costs associated with the issuance of the notes.

The bill would provide that the notes may not be deemed to constitute a debt or liability of the state or any political subdivision thereof, or a pledge of the full faith and credit of the state or any political subdivision thereof, but shall be paid solely from the funds and revenues pledged for that purpose.

The bill would limit the eligible projects to transportation projects that have been designated for accelerated construction by the commission.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The heading of Chapter 4 (immediately following Section 14536) of Part 5.3 of Division 3 of the Government Code is repealed.

SEC. 2. The heading of Article 1 (immediately following Section 14536) of Chapter 4 of Part 5.3 of Division 3 of the Government Code is repealed.

SEC. 3. Chapter 4 (commencing with Section 14550) is added to Part 5.3 of Division 3 of the Government Code, to read:

CHAPTER 4. FEDERAL HIGHWAY GRANT ANTICIPATION NOTES
Article 1. Legislative Findings and Declarations

14550. The Legislature hereby finds and declares all of the following:

(a) Between 1970 and 1990, California's population grew by 50 percent, while the total number of miles driven in the state increased by 100 percent.

(b) Conservative estimates have the state adding an additional 6 million new residents by the end of the next decade.

(c) Revenues available for investment in California's transportation system have not kept pace with that increasing state population, or with the increased demand on the state's transportation infrastructure.

(d) California is now home to five of the nation's 10 most congested urban areas.

(e) Between 1987 and 1995, the number of California drivers who sit idle in traffic congestion has grown by 70 percent, and California drivers now sit idle in traffic congestion more than 300,000 hours per day.

(f) It is estimated that traffic congestion in California now costs the state's businesses more than two million eight hundred thousand dollars (\$2,800,000) per day in lost time and resources.

(g) The United States Congress recently authorized states under the federal National Highway System Designation Act of 1995 and the federal Transportation Equity Act for the 21st Century to issue "GARVEE bonds," which are tax-exempt anticipation notes backed by annual federal appropriations for federal aid transportation projects.

(h) Utilizing grant anticipation notes to finance federal

transportation projects can greatly accelerate projects and can result in significant cost savings to the state, since those transportation projects can be completed at present-day costs.

(i) Funding transportation projects with grant anticipation notes can also deliver projects to the public significantly sooner than traditional funding mechanisms.

(j) Therefore, it is in the best interest of the State of California to develop these new and innovative methods for funding and accelerating critical transportation infrastructure projects.

Article 2. Definitions

14552. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

14552.2. "Eligible Project" means any highway or other transportation project that has been designated for accelerated construction by the commission.

14552.4. "Federal transportation funds" means any funds apportioned to the state by the United States Department of Transportation, including, but not limited to, funds paid pursuant to the Transportation Equity Act for the 21st Century (Public Law 105-178).

14552.6. A "note" is a federal highway grant anticipation note issued by the Treasurer under this chapter.

Article 3. Selection of Projects

14553. (a) The commission may from time to time select and designate eligible projects to be funded from the proceeds of notes, if financing of the project from the proceeds of notes has been approved by the Federal Highway Administration and the regional transportation planning agency, and the project has completed environmental clearance and project design.

(b) Notwithstanding Section 7550.5 of the Government Code, on or before April 1 of each year, the commission, in conjunction with the Treasurer's office, shall prepare an annual analysis of the bonding capacity of federal transportation funds deposited in the State Highway Account in the State Transportation Fund.

14553.2. The commission, in cooperation with the department and regional transportation planning agencies, shall establish guidelines for eligibility for funding allocations under this chapter. The guidelines shall be nondiscriminatory and shall be designed to allow as many counties as possible to establish eligibility for funding allocations under this chapter, regardless of the population or geographic location of the county.

14553.4. The Treasurer may not authorize the issuance of notes if the annual repayment obligations of all outstanding notes in any fiscal year would exceed 30 percent of the total amount of federal transportation funds deposited in the State Highway Account in the State Transportation Fund for any consecutive 12-month period within the preceding 24 months.

14553.6. All funds allocated to a project under this chapter, including cost overruns and financing costs, shall be counted against the state transportation improvement program county share for the county in which the project is located.

14553.7. In order to provide security for repayment of the notes, the commission shall adopt a resolution dedicating and pledging any

future receipts of federal transportation funds received by the state to the payment of principal of, and interest and premium on the notes, for as long as any notes remain outstanding. That action shall constitute a pledge or receipt of those moneys as collateral within the meaning of subdivision (b) of Section 5450. The pledge shall be governed under Chapter 5.5 (commencing with Section 5450) of Division 6 of Title 1 of the Government Code. The commission shall be deemed a "public body" for purposes of Section 5451, as defined in Section 5450.

14553.8. Before notes are issued under this chapter, the commission, in cooperation with the department, shall consider and determine the appropriateness of the mechanism authorized by this chapter in comparison to other funding mechanisms, including, but not limited to, pay-as-you-go, federal advance construction, federal incremental advance construction, or other funding methods authorized under federal law to achieve maximum efficiency from the state's federal allocation of transportation funds.

14553.9. (a) Upon taking the actions authorized under this article, the commission may request the Treasurer to issue notes to provide funds for the eligible projects.

(b) Notwithstanding Section 7550.5 of the Government Code, on or before April 1 of each year, the commission shall prepare and submit an annual report regarding the preceding calendar year to the Governor and the Legislature. Each report shall compile and detail the total amount of outstanding debt issued pursuant to this chapter and the projects funded by that outstanding debt.

Article 4. Issuance of Notes

14554. (a) In order to provide for the financing of selected projects, the Treasurer may issue tax-exempt or taxable notes under this article. Proceeds of the sale of those notes shall be deposited in the Transportation Financing Subaccount, which is hereby created as a special trust fund in the State Highway Account in the State Transportation Fund. The funds in the subaccount shall be available for use as directed by the commission and administered by the department and to pay costs associated with the issuance or further security of the notes or for capitalized interest of up to 12 months.

(b) Any issue of notes may be secured and made more attractive to capital markets through financial instruments, including, but not limited to, the following:

(1) Credit enhancements, including, but not limited to, letters of credit, bond insurance, and surety bonds provided by private sector financial institutions.

(2) Insurance and guarantees provided by any other agency of the state.

14554.2. The Treasurer shall issue notes from time to time pursuant to a resolution from the commission. Those pledges shall be governed under Chapter 5.5 (commencing with Section 5450) of Division 6 of Title 1 of the Government Code. The resolution may contain any of the following provisions, which shall be a part of the contract with the holders of the notes to be authorized:

(a) Provisions pledging receipt of future federal transportation funds to secure the payment of the notes or of any particular issue of notes, subject to those agreements with noteholders as may then exist, and pledging moneys held in funds and accounts pursuant to the

note issue, or the earnings thereon. The Treasurer may authorize classes of notes having different priority in the receipt of available federal transportation funds.

(b) Provisions for the investment of proceeds of the notes or of the moneys received by the Treasurer for repayment of the notes.

(c) Provisions setting aside reserves or sinking funds, and the regulation and disposition thereof.

(d) Limitations on the issuance of additional notes, the terms upon which additional notes may be issued and secured, and the refunding of outstanding notes.

(e) The procedure, if any, by which the terms of any contract with noteholders may be amended or abrogated, the amount of notes and the holders thereof that are required to give consent thereto, and the manner in which the consent may be given.

(f) Definitions of acts or omissions to act that constitute a default in the duties of the state to holders of the notes, and provisions on the rights and remedies of the holders in the event of a default.

14554.4. Any notes issued under this chapter may be secured by a trust agreement, indenture, or resolution by and between the commission and a trustee. The trustee may be the Treasurer or a bank or trust company chartered under the laws of this state or of the United States and designated by the Treasurer. The Treasurer may act under the note resolution as the fiscal agent for the notes.

14554.6. The notes shall be authorized by resolution or resolutions of the Treasurer, shall be in the form, shall bear the date or dates, and shall mature at the time or times, as the resolution or resolutions may provide, except that no note may mature more than 30 years from the date of its issue. The fixed or variable notes shall bear interest at the rate or rates, be in the denominations, be in the form, be executed in the manner, be payable in the medium of payment at the place or places within or without the state, be subject to the terms of redemption and contain the terms and conditions, that the resolution or resolutions may provide. The notes shall be sold at public or private sale by the Treasurer at, above, or below the par value, on the terms and conditions and for the consideration that the Treasurer shall determine.

14554.8. (a) Notwithstanding Section 13340 of the Government Code, the amounts specified in the annual Budget Act as having been deposited in the State Highway Account in the State Transportation Fund from federal transportation funds, and pledged by the commission under this chapter, are hereby continuously appropriated, without regard to fiscal years, to the Treasurer for the purposes of, and in accordance with, this chapter.

(b) Funds that are subject to Section 1 or 2 of Article XIX of the California Constitution may be used as the state or local principal match for any project that is eligible for federal matching funds and is funded pursuant to this chapter.

14555. Upon request of the commission, the Treasurer may issue refunding notes to refund any outstanding notes, and to pay costs associated with that refunding.

14555.2. Whenever the Treasurer deems that it will increase the salability or the price of the notes to obtain, prior to or after sale, a legal opinion, other than that of the Attorney General, as to the validity or tax-exempt nature of the notes, the Treasurer may obtain that legal opinion. Payment for those legal services shall be made from the proceeds of the sale of the notes.

14555.4. The Treasurer may employ financial, engineering, or transportation consultants or advisers, underwriters, and accountants as may be necessary in his or her judgment in connection with the issuance and sale of any notes of the Treasurer. Payment for these services may be made out of the proceeds of the sale of the notes.

14555.6. Section 10295 of the Public Contract Code and Article 4 (commencing with Section 10335) of, and Article 5 (commencing with Section 10355) of, Chapter 2 of Part 2 of Division 2 of the Public Contract Code do not apply to agreements entered into by the Treasurer pursuant to the sale of notes authorized under this chapter.

14555.8. Notes issued under this chapter are a legal investment for any state special or trust fund notwithstanding any provision of law limiting the investments that may be made by the special or trust fund. The notes shall be legal investments in which all public officers and public bodies of the state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, savings and loan associations, savings banks and savings associations, investment companies, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons authorized to invest in notes or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The notes may be used as security for public deposits. The notes are also securities that may properly and legally be deposited with and received by all public officers and bodies of state or any agency or political subdivision of the state and all municipalities and public corporations for any purpose for which the deposit of notes or other obligations of the state is authorized by law, including deposits to secured public funds.

14555.9. Notes issued under the provisions of this chapter may not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, or a pledge of the full faith and credit of the state or of any political subdivision thereof, but shall be payable solely from the funds and revenues pledged therefor.

All the notes shall contain on their face a statement to the effect that the State of California shall not be obligated to pay the principal, or the interest on the notes, except from the revenues received by the Treasurer as shall be provided by the documents governing the revenue note issuance, and that neither the faith and credit nor the taxing power of the State of California or of any of its political subdivisions is pledged to the payment of the principal or interest on the notes. The issuance of notes under this part shall not directly or indirectly or contingently obligate the state or any of its political subdivisions to levy or to pledge any form of taxation whatever or to make any appropriation for their payment.